

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CANDYCE MARTIN 1999
IRREVOCABLE TRUST,

Petitioner,

No. C 08-5150 PJH

v.

FINAL PRETRIAL ORDER

THE UNITED STATES OF AMERICA,

Respondent.

This matter came on for a pretrial conference before the court on July 7, 2011. Pursuant to Rule 16(e) of the Federal Rules of Civil Procedure, this final pretrial order is hereby entered and shall control the course of the trial unless modified by a subsequent order. The joint pretrial statement of the parties is incorporated herein except as modified by the court's ruling on the pretrial motions and objections.

I. MOTIONS IN LIMINE

1. Respondent's motion to exclude portions of the errata sheet to the transcript of the Francis A. Martin III deposition is GRANTED as unopposed.

2. Respondent's motion to exclude the deposition testimony of former IRS Revenue Officer Dennis Fude and any documentary evidence relating to the issue whether the limitations period for the issuance of the FPAA to First Ship 2000-A, LLC ("2000-A") had expired is GRANTED. By order dated December 11, 2009, the court denied petitioner's motion for partial summary judgment on the issue whether the FPAA that the IRS issued to 2000-A on June 19, 2008 is barred by the statute of limitations. Doc. no. 31. In the order denying petitioner's motion for partial summary judgment, the court determined, as a matter of law, that the parties' agreements to extend the statutory assessment period

1 encompassed both 2000-A and First Ship and that the FPAA was not time-barred. Id. at 8.
2 Having decided the issue of timeliness of the FPAA, the court will not reopen this issue for
3 trial.

4 Pursuant to Civil Local Rule 56-3, the court hereby specifies that the court's ruling on
5 petitioner's motion for partial summary judgment is deemed established for purposes of the
6 trial of this case as follows: "the court finds that the extension agreements encompass the
7 adjustments made by the IRS in the FPAA issued to 2000-A. Since the extension
8 agreements extended the statutory period to June 30, 2008, and the FPAA was issued on
9 June 19, 2008, the FPAA is not time-barred." Id.

10 II. MOTION TO EXCLUDE PURSUANT TO FRE 702

11 Respondent's motion to exclude the expert report and testimony of Stuart A. Smith
12 pursuant to Federal Rule of Evidence 702 is DENIED. To the extent that Smith's testimony
13 purports to apply the law or offer legal conclusions, the court will disregard any testimony
14 that invades the province of the court.

15 III. TRIAL SCHEDULE AND TIME LIMITS

16 The trial will commence on August 22, 2011 at 8:30 a.m. for 8 trial days excluding
17 Wednesdays. Each side will be permitted 18 hours for all examination and argument.

18
19 **IT IS SO ORDERED.**

20 Dated: July 8, 2011



21 PHYLLIS J. HAMILTON
22 United States District Judge
23
24
25
26
27
28